

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

Gregory Sali
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Pro Se
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Boise, Idaho 83704
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77-7003
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UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

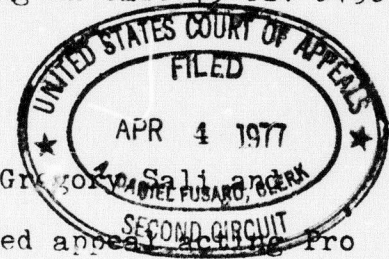
Irving Trust Company
Plaintiff,

vs.

American Triticale, Inc., Gregory
Sali and Dorothy W. Sali,
Defendants.

77-7003

This is Appellants Brief
For Appeal From District
Court Southern District of
New York Judge Bonsal
Presiding in Case 75 Civ 2790



COMES NOW American Triticale, Inc., Gregory Sali and
Dorothy W. Sali, Appellants in the above titled appeal Pro
Se for themselves in this matter, and appeal to this Court for
relief and reversal of the Judgement entered against them by the
presiding Judge Dudley B. Bonsal in the Southern District Court of
the United States in the case titled 75 Civ. 2790, Irving Trust
Company vs. American Triticale, Inc., Gregory Sali and Dorothy W.

Sali.

Said Judgement is given in the Index to the Record on Appeal before this Court as items; 23, Motion to Vacate Judgement; item 24, Memo-end on motion denied after argument. Said documents are included in the Appendix attached.

Because Appellants in this matter are suffering extreme financial hardship due to Appellees past actions, they are forced to act Pro Se. It must be further noted their attorney, Barry Singer, abandoned them in what is believed to be collusion and conspiracy between Singer and opposing Counsel to give Judgement to the detriment of Appellants to Appellees. Further since Appellants were not experienced or familiar with the rules of forma pauperis, they acted in such a manner that they were subsequently informed by the Court Clerk that since they had paid the \$50.00 docket fee they were further barred from assistance from a Court appointed counsel.

Therefore, Appellants shall act Pro Se and request the indulgence of the Court in procedures, pleadings and form or other matters in the conduct of this appeal.

In support of this request we ask the Court to review the following case matter:

PRO SE COMPLAINTS, ACCORDING TO THE SUPREME COURT ARE HELD "TO LESS STRINGENT STANDARDS THAN FORMAL PLEADINGS BY LAWYERS," AND REGARDLESS OF WHO REPRESENTS THE PLAINTIFF A MOTION TO DISMISS IS NOT TO BE GRANTED UNLESS IT APPEARS BEYOND DOUBT THAT THE PLAINTIFF CAN PROVE NO SET OF ACTS WHICH WOULD ENTITLE HIM TO RELIEF. HAINES VS KERNER, 1972, 404 US., 519, 30 L ED 2D 652, 92 S. CT. 594, 496, REH DEN, 405 US 948, 30 L ED 2D 918, 92 S CT. 963.

The nature of the case and result are as follows:
Plaintiff sued to collect loans made to the corporate defendant, and guaranteed by the individual defendants. Defendants asserted that, pursuant to the loan agreements, the loans were repayable only out

of the sale of the collateral. Defendants interposed the defense and counterclaim that plaintiff had breached the loan agreement and interfered with and prevented the repayment of the loan. Defendants because of Plaintiffs action were placed in severe financial hardship and were without funds to appear in New York for deposition. A stipulation was entered and so ordered providing for entry of judgement against defendants if they failed to appear in New York for deposition. Defendant's attorney did not fully advise them as to the character of the "consent" stipulation. Defendants requested and agreed to appear for deposition in Boise but Plaintiff would not permit such deposition. Defendants were without funds to make the trip to New York on the date scheduled for deposition, but called their attorney to arrange a subsequent date. Plaintiffs failed to agree to a new date. Defendants thereafter did appear in New York and Plaintiffs tentatively scheduled an afternoon meeting but then cancelled. Defendant offered them-

selves again in New York twice during September, October and were advised the notice was too short. Plaintiffs were merely letting time run on the matter. Thereafter Plaintiffs filed judgement against Defendants. Defendants attorney during this time always failed to arrange a new date for depositions and did not take action or advise his clients of any legal action available to force a new date for the deposition. Thereafter, defendants offered to and did appear for their deposition which were taken without prejudice to the judgement which had been entered and plaintiffs only agreed to such deposition on the condition that defendant first be examined as to assets. After the taking of the depositions, defendants moved to vacate the judgement on the ground that financial hardship had prevented their appearance on the originally scheduled date. Plaintiff filed an affidavit in answer that contained false and misleading statements. The District Court denied the motion to vacate thereby denying Defendants right to remedy thru proper due process of law. Justice can not be denied due to financial hardship to Defendants caused by Plaintiffs.

Issues raised in this matter are that the District Court erred in denying defendants' motion to vacate the judgement because:

1. Appellants have been denied due process of law and denied their constitutional right to be heard in a regular trial.
2. Appellants were unable to make the trip to New York for the deposition due to financial hardship caused by Appellees action.
3. Appellants believe they were badly served by their Counsel and the record will show evidence of collusion between the attorneys involved, preventing proper due process of law.
4. Appellees "Memorandum in Opposition to Defendants motion to Vacate a Consent Judgement" contains false statements, upon which the Judge may have relied.
5. Appellees have been informed by their previous Counsel, Barry Singer, that the reason that Judge Bonsal gave for his decision not to vacate the Judgement was that "this case had been in Court long enough".

Legal justification to support the Appellants position that the Circuit Court erred in its decision and that the lower Court decision should be reversed are given below:

Issue #1. Article V of the Constitution provides no person shall be deprived of his property without due process of law. Due Process of Law requires that no man shall be deprived of his property without being heard in his own defense.

THE PRINCIPLE THAT NO PERSON SHOULD BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY EXCEPT BY DUE PROCESS OF LAW DID NOT ORIGINATE IN THE AMERICAN SYSTEM OF CONSTITUTIONAL LAW, BUT WAS CONTAINED IN THE MAGNA CARTA AS A PART OF THE ANCIENT LIBERTIES. CHAPTER 39 OF MAGNA CHARTA (SOMETIMES REFERRED TO AS "CHAPTER 29"), CONFIRMED ON THE 19TH DAY OF JUNE, 1215, DECLARED: "NO FREEMAN SHALL BE TAKEN, OR IMPRISONED, OR DISSEISED, OR

OUTLAWED, OR EXILED, OR ANYWISE DESTROYED; NOR SHALL WE GO UPON HIM,
NOR SEND UPON HIM, BUT BY LAWFUL JUDGEMENT OF HIS PEERS OR BY THE LAW
OF THE LAND." IT HAS EVEN BEEN SAID THAT THE PRINCIPLE WAS KNOWN BEFORE
MAGNA CHARTA AND THAT IT WAS ORIGINALLY DESIGNED TO SECURE THE SUBJECT
AGAINST ARBITRARY ACTION OF THE CROWN AND TO PLACE HIM UNDER THE
PROTECTION OF THE LAW. IT IS SETTLED BEYOND QUESTION THAT THIS
PRINCIPLE CAME FROM ENGLAND TO AMERICA AS PART OF THE COMMON LAW AND
HAD BEEN A FUNDAMENTAL RULE IN COMMON LAW. WHEN FIRST ADOPTED IN MAGNA
CHARTA, THE PHRASE "LAW OF THE LAND" HAD REFERENCE TO THE COMMON AND
STATUTE LAW THEN EXISTING IN ENGLAND; AND WHEN EMBODIED IN CONSTITUTIONS
IN THIS COUNTRY, IT REFERRED TO THE SAME COMMON LAW AS PREVIOUSLY MODI-
FIED, AND AS FAR AS SUITED TO THE WANTS AND CONDITION OF THE PEOPLE.
16 AM JUR 2 D, CONSTITUTIONAL LAW, SECTION 543.

IT HAS BEEN SAID THAT DUE PROCESS OF LAW MUST BE UNDERSTOOD TO MEAN LAW IN THE REGULAR COURSE OF ADMINISTRATION THROUGH COURTS OF JUSTICE ACCORDING TO THOSE RULES AND FORMS WHICH HAVE BEEN ESTABLISHED FOR THE PROTECTION OF PRIVATE RIGHTS. (16 AM. JUR., 2 D 546.)

THE IDEA OF PROCEDURAL DUE PROCESS IS REFLECTED IN THE STATEMENT THAT IT IS A RULE AS OLD AS THE LAW THAT NO ONE SHALL BE PERSONALLY BOUND UNTIL HE HAS HAD HIS DAY IN COURT, BY WHICH IS MEANT UNTIL HE HAS BEEN DULY CITED TO APPEAR AND HAS BEEN AFFORDED AN OPPORTUNITY TO BE HEARD. JUDGEMENT WITHOUT SUCH CITATION AND OPPORTUNITY LACKS ALL THE ATTRIBUTES OF A JUDICIAL DETERMINATION; IT IS JUDICIAL USURPATION AND OPPRESSION AND CAN NEVER BE UPHELD WHERE JUSTICE IS FAIRLY ADMINISTERED. (16 AM. JUR., 2 D 548.)

THE DUE PROCESS GUARANTY ASSURES THAT EVERY ONE SHALL HAVE HIS LIFE,
LIBERTY, PROPERTY, AND IMMUNITIES PROTECTED BY THE GENERAL RULES
CHARACTERISTIC OF, BASIC TO, AND EXISTING IN, OUR SOCIETY UNDER OUR
SYSTEM OF JURISPRUDENCE. STATE EX. REL. SWEETZER VS GREEN, 360 MO,
1249; 232 SW 897.

FOR A HEARING TO AFFORD DUE PROCESS, IT MUST BE HELD AT A MEANINGFULL
TIME AND MEANINGFULL MANNER. (USCA CONST AMEND 14, LIMEL VS SOUTHERN
UNION GAS CO. 378, F SUPP 964, D.C. TEX 1974)

SECURITY OF LIFE, LIMB, AND PROPERTY. DQVIDSON VS NEW ORLEANS, 96
U.S. 97, 24 L. ED. 616 LENT VS TILLSON, 140 U.S. 316, 11, SUP CT.
825, 35 L ED 419; PALMER VS MCFARLAND, 1330, U.S. 660, 10 SUP CT.,
324, 33 L. ED. 722.

DUE PROCESS OF LAW AS A GUARANTEE OF TRIAL BY JURY IN THE JUDICIAL
BRANCH OF GOVERNMENT:::" THE WORDS 'LAW OF THE LAND' OR 'DUE
PROCESS OF LAW' WHEN USED IN CONSIDERING THE PROPERTY RIGHTS OF
INDIVIDUALS, MEANS SUMMONS OR NOTICE, SUCH AS IS ORDINARILY GIVEN
UPON THE INSTITUTION OF A SUIT, DUE APPEARANCE OF THE PARTIES IN
INTEREST, PLEADING FACTS IN ISSUE, AND A DETERMINATION THEREOF BY A
JURY." (STATE VS ROSE, 33 DEL, 168, 132, A 864, 45 ALA 85)

IT SEEMS TO US TO WARRANT A BELIEF THAT MEMBERS OF A CORPORATION
AS WELL AS INDIVIDUALS SHALL NOT BE SO DEPRIVED OF THEIR LIBERTIES
OR PROPERTIES, UNLESS BY A TRIAL BY JURY IN A COURT OF JUSTICE,
ACCORDING TO THE KNOWN AND ESTABLISHED RULES OF DECISION DERIVED
FROM THE COMMON LAW AND SUCH ACTS OF THE LEGISLATURE AS ARE CONSISTENT
WITH THE CONSTITUTION. (NORTH CAROLINA, VS FOY, 2 HAY 310,
312, 5 N. CAR. 57, 63, (1804).

THE PURPOSE OF A DUE PROCESS HEARING IS TO SAFEGUARD FROM DEPRIVATION THE LIBERTY OR PROPERTY RIGHTS OF PROTECTED PERSONS, AND THIS CAN ONLY BE DONE WHERE THE REQUISITE HEARING IS HELD BEFORE THE DECISION MAKER SO THAT THE DECISION MAKER CAN SIFT THROUGH THE FACTS, WEIGH THE EVIDENCE AND REACH THE APPROPRIATE CONCLUSION. (U.S.C.A. CONST AMEND 5, PONCE VS HOUSING AUTHORITY OF TULARE COUNTY, 389, F. SUPP 635, D.C. CAL 1975.)

WHEN CONSTITUTIONAL RIGHTS HAVE BEEN VIOLATED, REMEDIES FOR VIOLATIONS ARE NOT DEPENDANT UPON FICTIONALIZED DISTINCTIONS; PROPER INQUIRY IN SUCH CONTEXTS IS THE PROPRIETY OF GRANTING THE RELIEF REQUESTED IN LIGHT OF AVAILABLE ALTERNATIVES. KELLY VS U.S. 379 F SUPP 532.

"NO MAN SHALL BE DEPRIVED OF HIS PROPERTY WITHOUT BEING HEARD
IN HIS OWN DEFENSE." KINNEY V. BEVERLY, 2 HEN. & M (VA), 318,336.

THE ADOPTION OF THE XIV AMENDMENT COMPLETED THE CIRCLE OF PRO-
TECTION AGAINST VIOTATIONS OF THE PROVISION OF MAGNA CARTA, WHICH
GUARANTEED TO THE CITIZEN HIS, LIFE, LIBERTY, AND PROPERTY
AGAINST INTERFERENCE EXCEPT BY THE "LAW OF THE LAND", WHICH
PHRASE WAS COUPLED IN THE PETITION OF RIGHT WITH DUE PROCESS OF
LAW. THE LATTER PHRASE WAS THEN USED FOR THE FIRST TIME, BUT THE
TWO ARE GENERALLY TREATED AS MEANING THE SAME. THIS SECURITY IS
PROVIDED AS AGAINST THE UNITED STATES BY THE XIV AND VTH AMENDMENTS
AND AGAINST THE STATES BY THE XIV AMENDMENT. DAVIDSON VS NEW
ORLEANS 96, U.S. 97, 24 L ED 616.

THE ESSENTIAL ELEMENTS OF DUE PROCESS OF LAW ARE NOTICE AND
OPPORTUNITY TO DEFEND: SIMON V. CRAFT, 182, U.S. 427, 436, 21
SUP. CT. 836, 45 L., ED 1165; "IN DETERMINING WHETHER SUCH RIGHTS
WERE DENIED, WE ARE GOVERNED BY THE SUBSTANCE OF THINGS AND NOT
BY MERE FORM: ID., LOUSVILLE & N.R. CO. V SCHNIDT, 177 U.S. 270
20 SUP. CT., 620 44 L. ED 747.

Issue #2. and #3. Financial hardship caused by Appellees was well known to them and used by them to obstruct justice. The Appellant offered several times to have the deposition taken in Boise, but was refused.

After finally getting to New York for the deposition the Appellant, Gregory Sali, was informed that a creditors examination must be given first. His own attorney had not informed him of this requirement to taking a deposition. The truth is that a deposition was not even desired by Appellees but was only a ruse to have a creditor examination. All this was done in collusion with Appellants own attorney.

42 USC 1985. (2) ... IF TWO OR MORE PERSONS CONSPIRE FOR THE PURPOSE OF IMPEDING, HINDERING, OBSTRUCTING, OR DEFEATING, IN ANY MANNER, THE DUE COURSE OF JUSTICE IN ANY STATE OR TERRITORY, WITH THE INTENT TO DENY ANY CITIZEN THE EQUAL PROTECTION OF THE LAWS, OR TO INJURE HIM OR HIS PROPERTY FOR LAWFULLY ENFORCING, OR ATTEMPTING TO ENFORCE, THE RIGHT OF ANY PERSON, OR CLASS OR PERSONS, TO EQUAL PROTECTION OF THE LAWS. THE FOREGOING STATUTE DOES NOT SAY "ANY PERSON EXCEPT JUDGES". SEE U.S. _____ 20 L ED 619, 91 S. CT., BIVENS VS SIX UNKNOWN NAMED AGENTS OF THE FEDERAL BUREAU OF NARCOTICS.

IN ORDER TO MAINTAIN AN ACTION UNDER 42 USC 1983, IT IS NOT NECESSARY TO ALLEGE OR PROVE THAT THE DEFENDANTS INTENDED TO DEPRIVE PLAINTIFF OF HIS CONSTITUTIONAL RIGHTS OR THAT THEY ACTED WILLFULLY, PURPOSELY OR IN PURSUANCE OF A CONSPIRACY. IT IS SUFFICIENT TO ESTABLISH THAT THE DEPRIVATION OF CONSTITUTIONAL RIGHTS OR PRIVILEGES WAS THE NATURAL CONSEQUENCES OF THE ACTIONS OF DEFENDANTS ACTING UNDER THE COLOR OF LAW, IRRESPECTIVE OF WHETHER SUCH CONSEQUENCES WAS INTENDED. URY VS SANTEE, (1969 DC ILL).

EVERY PERSON WHO, UNDER COLOR OF ANY STATUTE, ORDINANCE, REGULATION, CUSTOM, OR USAGE, OF ANY STATE OR TERRITORY, SUBJECTS, OR CAUSES TO BE SUBJECTED, ANY CITIZEN OF THE UNITED STATES OR OTHER PERSON TO THE DEPRIVATION OF ANY RIGHTS, PRIVILEGES OR IMMUNITIES SECURED BY THE CONSTITUTION AND LAWS, SHALL BE LIABLE TO THE PARTY INJURED IN AN ACTION AT LAW, EQUITY, OR OTHER PROPER PROCEEDING FOR REDRESS.

(42 USC 1983)

SECTION 1983 HAS BEEN HELD TO PROVIDE A CIVIL ACTION TO PROTECT PERSONS AGAINST MISUSE OF POWER POSSESSED BY VIRTUE OF STATE LAW. "WAS CLOTHED WITH THE AUTHORITY OF THE STATE." (DAVIS VS. JOHNSON, 1955 DC ILL, 138 F. SUPP, 572: JOBSON VS HENNE 1966 CA 2 NY 355 F 2D 129.

42 USC 1985, (3).... IN ANY CASE OF CONSPIRACY SET FORTH IN THIS SECTION, IF ONE OR MORE PERSONS ENGAGED HEREIN DO, OR CAUSE TO BE DONE, ANY ACT IN FURTHERANCE OF THE OBJECT OF SUCH CONSPIRACY, WHEREBY ANOTHER IS INJURED IN HIS PERSON OR PROPERTY , OR DEPRIVED OF HAVING AND EXERCISING ANY RIGHT OR PRIVILEGE OF A CITIZEN OF THE UNITED STATES, THE PARTY SO INJURED OR DEPRIVED MAY HAVE AN ACTION FOR THE RECOVERY OF DAMAGES, OCCASSIONED BY SUCH INJURY OR DEPRIVATION, AGAINST ANY ONE OR MORE OF THE CONSPIRATORS.

42 USC 1986 PROVIDES: EVERY PERSON WHO, HAVING KNOWLEDGE THAT ANY OF THE WRONGS CONSPIRED TO BE DONE, AND MENTIONED IN THE PRECEDING SECTION (1985 OF TITLE 42) ARE ABOUT TO BE COMMITTED, AND HAVING POWER TO PREVENT OR AID IN PREVENTING THE COMMISSION OF SAME, NEGLECTS OR REFUSES SO TO DO, IF SUCH WRONGFUL ACT BE COMMITTED, SHALL BE LIABLE TO THE PARTY INJURED, OR HIS LEGAL REPRESENTATIVES, FOR ALL DAMAGES CAUSED BY SUCH WRONGFUL ACT WHICH SUCH PERSON BY REASONABLE DILIGENCE COULD HAVE PREVENTED; AND SUCH DAMAGES MAY BE RECOVERED IN AN ACTION ON THE CASE; AND ANY NUMBER OF PERSONS GUILTY OF SUCH WRONGFUL ACT, NEGLECT, OR REFUSAL, MAY BE JOINED AS DEFENDANTS IN THE ACTION.

Issue #4. Appellants requested alternative dates as shown in the Appendix but were put off prior to the default being taken. Defendants did appear to Appellees thru Counsel on August 16, 1976 and requested a new date. Appellees state a falsehood in saying that Appellant did not appear nor explain their non-appearances. These were conducted thru Appellants Counsel, Barry Singer and an afternoon deposition meeting was scheduled and then cancelled by Appellees, who from then on refused to set a date prior to taking judgement.

Appellees state a falsehood on pages 2 and 3 of Memorandum in Opposition to Defendants' Motion to Vacate a Consent Judgement in saying "Defendants never indicated to plaintiff that there would be any difficulty in defendants appearing as provided and agreed". The several delays in appearing for deposition were always because of lack of funds to make the trip from Boise, Idaho to New York. Appellees always knew the financial problem and admit this on page 3 "Because of defendant's admitted lack of assets".

Appellees again state a falsehood when they say their "hope of recovery on its claim is to realize the proceeds from the sale of grain by plaintiff". The truth is that Appellees refused to cooperate in any way in the sale of the grain and when Appellant had a bonafide purchase for the grain at \$6.00 per bushel, Appellee would not cooperate in the sale unless the counterclaim by Appellants were dropped. Subsequently the grain was sold for less than 50¢ per bushel average.

Additionally Appellee falsely claims there was no other hope of recovery when in truth a Bonded Warehouse Receipt protects a portion of the grain amounting to over \$100,000.00 Dollars and Appellee has consistantly refused to sue the Bonded Warehouse Agent for recovery.

CONCLUSION

Appellants pray the Court for relief in granting a reversal of the Judgement entered by Judge Bonsal denying a motion to vacate the default Judgement against Appellants and request an order for trial of the Case 75 Civ 2790 pursuant to the prescribed Constitutional Laws of Our Land.

Dated this 1st day of March 1977.

Respectfully Submitted

American Triticale, Inc.,

By:

Gregory Sali

Gregory Sali
Gregory Sali Pro Se

Dorothy W. Sali
Dorothy W. Sali, Pro Se

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 31st day of March, 1977
I mailed a true and accurate copy of the foregoing APPELLANTS
BRIEF FOR APPEAL FROM DISTRICT COURT SOUTHERN DISTRICT OF NEW
YORK REFERENCE DOCKET # 77-7003 to:

Mr. Roy H. Carlin
Krause, Hirsch & Gross
41 East 42nd Street
New York, New York 10017

by depositing a copy of the same in the United States Mail,
postage prepaid.

Dorothy W. Sali

Dorothy W. Sali

Pro Se

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. 75 Civil 2790 (DBB)

Irving Trust Company

vs.
American Triticale, Inc., Gregory Sali and
Dorothy W. Sali

JUDGMENT
#76,811CERTIFICATION OF JUDGMENT FOR
REGISTRATION IN ANOTHER DISTRICT

I, Raymond F. Burghardt, Clerk of the United States District Court for
the Southern District of New York,
do hereby certify the annexed to be a true and correct copy of the original judgment entered in the
above entitled action on September 8, 1976, as it appears of record in my office,
and that

- No notice of appeal from the said judgment has been filed in
my office, and the time for appeal commenced to run on
September 8, 1976 upon the entry of the judgment.

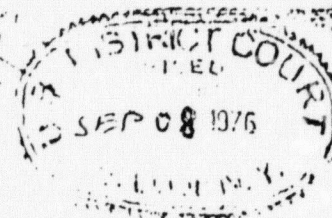
IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of the said
Court this 3rd. day of November, 1976.

Raymond F. Burghardt, Clerk
By F. J. L. Mura Deputy Clerk

* When no notice of appeal from the judgment has been filed, insert "no notice of appeal from the said judgment has been filed in my office and the time for appeal commenced to run on [insert date] upon the entry of [If no motion of the character described in Rule 73(a) F.R.C.P. was filed, here insert 'the judgment', otherwise describe the nature of the order from the entry of which time for appeal is computed under that rule.] If an appeal was taken, insert "a notice of appeal from the said judgment was filed in my office on [insert date] and the judgment was affirmed by mandate of the Court of Appeals issued [insert date]" or "a notice of appeal from the said judgment was filed in my office on [insert date] and the appeal was dismissed by the [insert 'Court of Appeals' or 'District Court'] on [insert date]", as the case may be.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Borsal, J.
MA



IRVING TRUST COMPANY,

75 Civ. 2790 (DBB)

Plaintiff,

-against-

JUDGMENT

AMERICAN TRITICALE, INC.,
GREGORY SALI and DOROTHY W. SALI,

11 76 811

Defendants.

-----X

This action having been commenced by the filing of a summons and complaint (Exhibit "A") on the 10th day of June, 1975; and copies of said summons and complaint having been duly served on the above named defendants in this action by a Deputy United States Marshal on the 17th day of June, 1975, and said summons and complaint, with proofs of the aforesaid services of process (Exhibit "B") having been filed in the office of the Clerk of this Court; and defendants' Amended Answer and the counterclaim of defendant AMERICAN TRITICALE, INC. having been served by mail

upon plaintiff on the 15th day of August, 1975 (Exhibit "C"),
and a Reply having been duly served by plaintiff upon defendants
(Exhibit "D"), and a motion having been made by plaintiff by notice
dated June 21, 1976, for an Order, pursuant to FRCP 17, striking
defendants' answer and counterclaim unless defendants appeared
for deposition, and a form of Order (Exhibit "E") having been
consented to by the parties to this action, said form of Order
directing that unless defendants appeared for deposition in the
offices of the attorneys for plaintiff on or before August 16, 1976,
the defendants' answer and counterclaim be stricken and judgment
awarded to plaintiff; and defendants having failed to appear for
said deposition, as is shown by the affidavit of DONALD K. WOODMAN

9261 80 1976
1471 F.O.D.H.

(Exhibit "F") and the statement of ROY H. CARLIN (Exhibit "G"),
it is

ORDERED, ADJUDGED and DECREED: That defendants' answer
and the counterclaim of defendant AMERICAN TRITICALE, INC. be
stricken and it is further

ORDERED, ADJUDGED and DECREED: That plaintiff have
judgment against defendants as prayed for in counts one through
seven of its complaint, as follows:

a) On the first count, against defendant AMERICAN
TRITICALE, INC., the sum of \$100,000.00 plus interest thereon,
from December 9, 1974 at the rate of fourteen (14) percent per
annum on a 360-day basis, in the sum of \$24,500.00, totaling
\$124,500.00.

b) On the second count, against defendant AMERICAN
TRITICALE, INC. fifteen (15) percent of the amount claimed in

the first count, amounting to the sum of \$3,675.00.

c) On the third count, against defendant AMERICAN TRITICALE, INC., the sum of \$230,000.00, plus interest thereon, from January 2, 1975, at the rate of thirteen and one-half (13-1/2) percent per annum on a 360-day basis, in the sum of \$52,474.50, totaling \$282,474.50.

d) On the fourth count, against defendant AMERICAN TRITICALE, INC., fifteen (15) percent of the amount claimed in the third count, amounting to the sum of \$7,871.18.

e) On the fifth count, against defendant AMERICAN TRITICALE, INC., the sum of \$120,000.00, plus interest thereon from January 2, 1975 at the rate of thirteen and one-half (13-1/2) percent per annum on a 360-day basis, in the sum of \$27,378.00 totaling \$147,378.00.

f) On the sixth count, against defendant AMERICAN TRITICALE, INC., fifteen (15) percent of the amount claimed in the fifth count, amounting to the sum of \$4,106.70.

g) On the seventh count, against defendants GREGORY SALI and DOROTHY W. SALI, the sum of \$450,000, plus interest thereon from January 2, 1975, in the sum of \$45,630.00, totaling \$495,630.00.

h) Costs and disbursements of this action, ~~in the~~
MB ~~sum of~~ *to be taxed.*

Dated: New York, New York
~~September 1, 1976~~

September 3,

John J. Ray

U.S.D.J.

Judgment Entered - 9/8/76
Raymond F. Burghardt
Clerk

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By *J. J. Harbison*
Deputy Clerk

Locket 77-7003
Appellants Brief
and Index

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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IRVING TRUST COMPANY,
Plaintiff

V

AMERICAN TRITICALE INC., GREGORY SALI
& DOROTHY W. SALI

Defendants
----- x

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF
NEW YORK

CASE NO. 75 CIV.2790

JUDGE D. B. Bonsal

IRVING TRUST CO. VS..AMERICAN TRITICALE, INC. et al

75 Civ 2790

BONSAL, J.

DATE	NR.	PROCEEDINGS	BEST COPY AVAILABLE
06-10-75	(1)	Filed complaint and issued summons.	
07-03-75	(2)	Filed summons with marshals return, American Triticale Inc. by D.W.Sali, Sec. Mr. Gregory Sali by W.T. Sali, (Son) Dorothy W. Sali " " " "	Served, on 6-17-75 on 6-17-75. on 6-17-75.
08-15-75	(3)	Filed ANSWER of defts. to the complaint.	P&S
08-19-75	(4)	Filed DEFAULT JUDGMENT # 75,686 & Clerk's certificate noting default- Ordered, that plttf. have judgment against defts. in the total sum of \$533,178.48. Bonsal, J. Judgment entered 8-19-75 Cler	
08-28-75	(5)	Filed stip & order that Judgment be vacated without liability to the plttf. Deft's may serve & file on or prior to 9-3-75 an answer time of plttf. to file a reply or make any motion with respect to said answer shall be ext. to 20 days after filing of answer. Bonsal, J.	
09-02-75	(6)	Filed Amended ANSWER.	
09-04-75	(7)	Filed plttf's reply to deft's counterclaim in his answer.	
09-05-75	(8)	Filed deft's notice to take deposition of plttf.	
09-24-75	(9)	Filed Stip&Order adjourning defts exam before trial of plttf from 9/23/75 to 9/30/75 further stipulated that adjournment without prejudice to defts' claim of right to exam. prior to hearing of plttf's motion for summary judgment. Bonsal, J.	
09-30-75	(10)	Filed plttf's affidavit & show cause order for summary judgment ret. 10-14-75.	
10-14-75	(11)	Filed stip & order that plttf's motion for summary judgment is adj. from 10-14-75 to 11-3-75. Bonsal, J.	
10-28-75	(12)	Filed further affidavit by H.E. West in opposition to plttf's motion for summary judgment ret. 11-3-75.	
10-31-75	(13)	Filed affidavit of G. Sali in opposition to plttf's motion for summary judgment ret. 11-3-75.	
10-31-75	(14)	Filed Further affidavit of of deft's in opposition to plttf's motion for summary judgment.	
10-31-75	(15)	Filed deft's statement pursuant to rule 9(g) of the general rules.	
10-31-75	(16)	Filed deft's memorandum in opposition to plttf's motion for summary judgment.	
10-31-75	(17)	Filed deft's amended statement pursuant to rule 9(g)	
02-20-76	(18)	Filed Memo-Decision #43910: Plttf's motion for summary judgment on its first, third, fifth & seventh claims is denied. So ordered. Bonsal, J.	
03-15-76	(19)	Filed consent & order to substitution of attys for deft's: Lowenthal Freedman, Landau, Fischer & Singer in place of Pollack & Singer. Bonsal, J.	
07-06-76	(20)	Filed plttf's affidavit & notice of motion striking deft's answer. ret. 7-12-76.	
07-20-76	---	Filed Memo-endorsed on plttf's motion filed 7-6-76 to strike deft's answer #20. Motion granted, no opposition insofar as deposition of deft's is to be held within 30 days of order to be settled hereon. Settling order on notice. Bonsal, J. m/n	
08-12-76	(21)	Filed consent order that unless deft's	

07-20-76== Filed Memo-endorsed on plttf's motion filed 7-6-76 to strike deft's answer #20. Motion granted, no opposition insofar as deposition of deft's is to be held within 30 days of order to be settled herein. Settle order on notice. Bonsal, J. m/n

08-12-76 (21) Filed Consent Order that unless Defts' appear for deposition at 10:30 A.M. on 08-16-76, upon submission, without further notice to defts, to this court by attys. for plttf. of an afdt. of non-appearance, deft answer and counter-claim shall be stricken and judgement awarded to the plttf. So Ordered. Bonsal J.

09-08-76 (22) Filed Judgment #76,811: Plttf. recover of deft. American Triticale, Inc. the sum of \$124,500-\$3,675-\$282,474.50--\$7,871.18-\$147 378 & \$4,106.70-on counts 1 thru 6th & plttf' have judgment against deft Sali in the sum of \$495,630 on the 7th Count. Bonsal, J. Judgment Ent. Clerk. m/n Ent. 9-13-76

11-08-76 23 Filed notice of motion by defts re: an order pursuant to Rule 62(b) FRCP vacating the judgment entered on 09-08-76 . ret. 11-15-76.
contd on Page 2

11-18-76 22 Filed affdvt plttf re: opposition to deft's motion to vacate judgment on default.

11-18-76 23 Filed memo by plttf re: opposition to deft's motion to vacate a consent judgment.

1-23-76 24 Filed memo-end on motion docketed 11-08-76 re: motion denied after argument. Bonsal J. m/n

12-6-76 25 Filed notice of appeal by defts to the U.S.C.A. from the order of 11-22-76 which denied defts' motion to vacate the judgment. copy to attorney for plttf